

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**OPINION AND ORDER**  
**DENYING LEAVE TO PROCEED IN FORMA PAUPERIS**

Plaintiff Lavern yBerryhill, a prisoner appearing pro se and seeking to bring a civil rights action, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit in conformance with 28 U.S.C. § 1915(a). A review of plaintiff's litigation history indicates he has accumulated at least three prior civil rights actions that count as "strikes," pursuant to 28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical harm.

28 U.S.C. § 1915(g).

In *Berryhill v. Poppell*, No. CIV-99-407-D (W.D. Okla. May 25, 1999), the United States District Court for the Western District of Oklahoma found that plaintiff had filed 11 previous lawsuits pursuant to 42 U.S.C. § 1983. *Id.*, slip op. at 1. Three of the 11 cases were dismissed for failure to state a claim or as frivolous, and one of the dismissals was affirmed on appeal:

*Berryhill v. Beckman*, No. CIV-85-1364-E, *aff'd*, No. 86-1533 (10th Cir. Oct.

22, 1986) (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); *Berryhill v. Maynard*, No. CIV 88-1034-T (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); and *Berryhill v. Faulk*, No. CIV-92-1705-T (dismissed upon filing for failure to state a claim).

*Berryhill v. Poppell*, No. CIV-99-407-D, slip op. at 2 n.1.

Plaintiff alleges in his complaint that the defendants, who are magistrate and district judges in this court, the Court Clerk, a district judge's secretary, and the Eastern District Rules Committee, are using their positions and authority to continue their Ku Klux Klan RICO activities that are extending his detention in involuntary servitude. These are the same types of claims he has made in previous cases. See *Berryhill v. White*, No. CIV 10-176-JHP (E.D. Okla. June 7, 2010); *Berryhill v. Henry*, No. CIV 10-091-FHS-SPS (E.D. Okla. May 5, 2010). While he claims the defendants' activities have caused him undue pain and suffering, the court finds his conclusory allegations fail to set forth a credible claim that he is in imminent danger of serious physical harm and that he qualifies for the exception in 28 U.S.C. § 1915(g).

**ACCORDINGLY**, plaintiff's motion for leave to proceed *in forma pauperis* [Docket #2] is DENIED. Plaintiff is directed to forward the **\$350.00** filing fee to the Court Clerk within twenty (20) days. The agency having custody of plaintiff is ordered to release funds from plaintiff's accounts, including plaintiff's trust account, for payment of the filing fee. Failure to comply with this order will result in dismissal of this action.

**IT IS SO ORDERED** this 16<sup>th</sup> day of July 2010.



James H. Payne  
United States District Judge  
Eastern District of Oklahoma